



PLACER, County Recorder

JIM MCCAULEY

**DOC- 2004-0118059**

Check Number 2208dh

Friday, SEP 03, 2004 11:46:16

MIC \$3.00 AUT \$17.00 SBS \$16.00

REC \$19.00

Ttl Pd \$55.00

Nbr-0001144819

rec/DH/1-17

RECORDING REQUESTED BY:

Whitebridge, LLC

7700 College Town Drive, Suite 215

Sacramento, California 95826

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control

8800 Cal Center Drive

Sacramento California 95826

Attention: James L. Tjosvold, P.E., Chief

Northern California-Central Cleanup

Operations Branch

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(RE: Placer County APN # 037-021-004, being a portion of Ashley Creek Drive in  
Whitebridge Estates)

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This Covenant and Agreement ("Covenant") is made by and between the Whitebridge LLC., (the "Covenantor"), the current owner of property situated in Loomis, County of Placer, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health, safety, or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260.

The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I  
STATEMENT OF FACTS

1.01 The Property, totaling approximately one acre is more particularly described and depicted in Exhibit "A" and "B", attached hereto and incorporated herein by this reference.

The Property is a portion of Ashley Creek Drive, County of Placer, State of California. The Property is the location where hazardous substances were consolidated and placed in a containment cell lined with a geotech fabric and an asphalt cap that is part of the road system for the subdivision. The containment cell is beneath the road and the asphalt cap for the containment cell is a portion of the road's surface. The Property is approximately 18 feet wide and 550 feet long being the portion of Ashley Creek Drive beginning approximately 220 feet west along Ashley Creek Drive from its intersection with Rustic Woods Court, and being approximately 175 feet east of the intersection of Ashley Creek Drive with Pleasant Oak Court. This property is more specifically described as Placer County Assessor's Parcel No.:

037-021-004

1.02 The Property is more particularly described in Exhibit "B" which is attached and incorporated by this reference. The property ("Property") is more particularly defined below (and in Exhibit A) as:

All that portion of the Northwest Quarter of Section 1. Township 11 North, Range 7 East, M.D.M. being a portion of that certain of land conveyed to Auburn Manor Holding Corporation, by that certain Grant Deed recorded on March 4, 1998 as Document No

9080014364, Official Record of Placer County, being more particularly described as follows:

A strip of land uniform width of 18.00 feet, measured at right angles, the centerline line of which is described as follows:

Beginning at point in the Northwest Quarter of Section 1, Township 11 North, Range 7 East M.D.M., from which the South One-Quarter of said Section 1 bears the following two (2) courses, (1) S 49°39'17" E 683.54 feet, (2) S 00° 16' 55" W 2741.80 feet, Then from the point of beginning S 89° 55' 13" W 332.02 feet to the beginning of a 450.00 foot radius curve to the left; then along the arc of said curve a distance of 217.99 feet through a central angle of 27° 45' 18" and being subtended by a chord bearing and distance of S 76° 02' 34" W 215.86 feet to a point having a radial bearing of N 27° 50' 04" W and being the end of this description.

The basis of bearing for this description is identical with that of Book 20 of Parcel Maps, at Page 97 as determined by found monuments at the West one-quarter and the Southwest corner of Section 1, T.11 N., R 7 E, M.D.M., and being North 00° 23' 48" West between said monuments.

1.03 The Property is a portion of a site being remediated pursuant to the Whitebridge Removal Action Work Plan. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including arsenic, lead, and organochloride pesticides, remain in the soil in and under portions of the Property, the Removal Action Work Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the Removal Action Work Plan and a Final Health Risk Assessment, together with a notice of exemption pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The Removal Action Work Plan and the notice of exemption were approved by the Department on May 1, 2003. Remediation includes installing and maintaining an asphalt cover ("Cap") over the

Property. The Cap consists of asphalt and will be used as a roadway, as more particularly described in the engineering drawing attached as Exhibit "B" hereto. The operation and maintenance of the Cap is pursuant to an Operation and Maintenance Manual incorporated into the Operation and Maintenance Agreement between Whitebridge, LLC. and the Department.

1.04 As detailed in the Final Health Risk Assessment as approved by the Department on May 1, 2003, all or a portion of the surface and subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following metal contaminants of concern in the ranges set forth below: arsenic (36 to 141 parts per million ("ppm") and lead (209 to 440 ppm). Based on the Final Risk Assessment the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, when limited to open space and contained in place under the asphalt cap.

## ARTICLE II DEFINITIONS

2.01 Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

### ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06 Costs of Administering the Deed Restriction to be paid by Owner. The terms of this deed restriction run with the land and will continue in perpetuity unless a variance is granted pursuant to section 6.01, or unless terminated pursuant to section 6.02. The Department has already incurred and will in the future incur costs associated with the administration of this deed restriction. Therefore, the Owner hereby covenants for himself and for all subsequent owners that pursuant to Title 22 California Code of Regulations section 67391.1(h), the property owner agrees to pay the Department's cost in administering the deed restriction. In the event the property ownership changes between the time that the Department's administrative costs were incurred and the invoice for such costs is received, each owner of the property for the period covered by the invoice, as well as the current owner is responsible for such costs. The O&M Agreement provides additional information on payment of costs for activities associated with the deed restriction as well as information on the financial assurance as part of the O&M Agreement.

#### ARTICLE IV RESTRICTIONS

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes.

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) No utilities, including but not limited to: gas, electric, water, telephone, fiber optics, cable, sewer, and storm drains, will be placed in the containment cell. In addition, adjacent utilities will be placed at a distance so that installation, use, or repair of those utilities will not jeopardize the integrity of the containment cell or the asphalt cap.

#### 4.02 Soil Management

- (a) No activities that will disturb the soil at or below the ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property below the ground surface.

4.03 Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops);
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

- (c) Placement of fill material, lawn clippings, oil, chemicals, or trash of any kind within the Property.
- (d) Domestic landscaping and irrigation, including accessory structures, swimming pools and spas is prohibited.
- (e) Excavation without the Department's prior approval of a Soil Management Plan.

#### 4.04 Non-Interference with Cap.

Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Cap.
- (c) The Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within five (5) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities

consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06 Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement for the life of such Agreement, anticipated to be in effect in perpetuity unless impacted by a modification pursuant to paragraph 6.01 – Variance, paragraph 6.02 – Termination or paragraph 6.03 - Term.

## ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean any buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

## ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Placer within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Whitebridge, LLC

7700 College Town Drive, Suite 215

Sacramento, California 95826

To Department:

James L. Tjosvold, P.E., Chief

Northern California-Central Operations Branch

Site Mitigation and Brownfields Reuse Program

California Department of Toxic Substances Control

8800 Cal Center Drive

Sacramento California 95826

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Maintenance requirements. The asphalt cap and containment cell shall be perpetually maintained to ensure that the public does not come into contact with the contaminated soil. Under no circumstances shall the cap remain in disrepair for a period longer than thirty (30) days following discovery of damage. Further, the condition of the cap and any required maintenance shall be evaluated as part of the annual inspection as outlined in 7.08 below.

7.08 Annual Reporting Requirements. Section 67391.1 of title 22, division 4.5, chapter 39 of the California Code of Regulation titled "Requirements for Land Use Covenants" (22 CCR 67391.1) requires an implementation and enforcement plan to address the monitoring and maintenance necessary to ensure prohibited uses are not occurring on the deed restricted property. This implementation and enforcement plan will be in the form of an annual inspection of the asphalt cap and an annual report. After the recording of the deed restriction, the annual report shall be provided to the Department, Placer County Environmental Health Department, and the Homeowner's Association by January 15<sup>th</sup> of each calendar year. The annual report shall describe how all the requirements outlined in the Deed Restriction and the Operation and Maintenance Agreement have been met. The annual report, filed under penalty of perjury by the then current owner(s), shall certify that the property is being used in a manner consistent with the terms of the deed restriction and that all steps required under the Operations and Maintenance Agreement have been taken to ensure compliance with the deed restriction's terms. If the property owner identifies any violations of the deed restriction during the annual inspections, the property owner must within 90 days of identifying the violation; determine the identity of the party in violation, send a letter advising the party of the violation of the deed restriction and demand that the violation cease immediately. Such letter shall be sent by certified mail with return receipt and signature required.

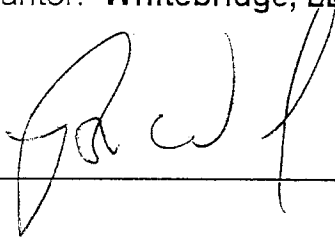
The annual report must include the dates, times, and names of those who conducted and reviewed the annual inspection. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) The annual report shall contain a discussion of the integrity of the containment cell, the asphalt cap and all associated features and provide recommendation for repairs, if necessary. If violations are noted by the observer, the annual report must detail the steps taken to return to compliance. Additionally, copies

of any correspondence related to the enforcement of the deed restriction shall be sent to the Department within ten days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: **Whitebridge, LLC**

By: \_\_\_\_\_

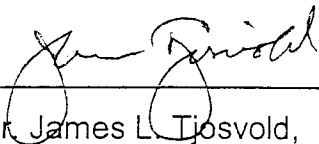


Date: \_\_\_\_\_

9/2/04

Department of Toxic Substances Control:

By: \_\_\_\_\_



Mr. James L. Tjosvold, Chief

Date: \_\_\_\_\_

9/2/04

Northern California-Central Cleanup Operations Branch

Attachment(s)

**EXHIBIT "A"**  
**CONTAINMENT CELL**

All the real property situate in the County of Placer, State of California, more particularly described as follows:

All that portion of the Northwest Quarter of Section 1, Township 11 North, Range 7 East, M.D.M., being a portion of that certain parcel of land conveyed to Auburn Manor Holding Corporation, a California corporation, by that certain Grant Deed recorded on March 4, 1998, as Document No. 98-0014364, Official Records of Placer County, being more particularly described as follows:

A strip of land with a uniform width of 18.00 feet, measured at right angles, the centerline line of which is described as follows:

Beginning at a point in the Northwest Quarter of Section 1, Township 11 North, Range 7 East, M.D.M., from which the South One-Quarter Corner of said Section 1 bears the following two (2) courses, (1) S 49°39'17" E 683.54 feet, (2) S 00°16'55" W 2741.80 feet, Thence from the Point of Beginning S 89°55'13" W 332.02 feet to the beginning of a 450.00 foot radius curve to the left; thence along the arc of said curve a distance of 217.99 feet through a central angle of 27°45'18" and being subtended by a chord bearing and distance of S 76°02'34" W 215.86 feet to a point having a radial bearing of N 27°50'04" W and being the end of this description.

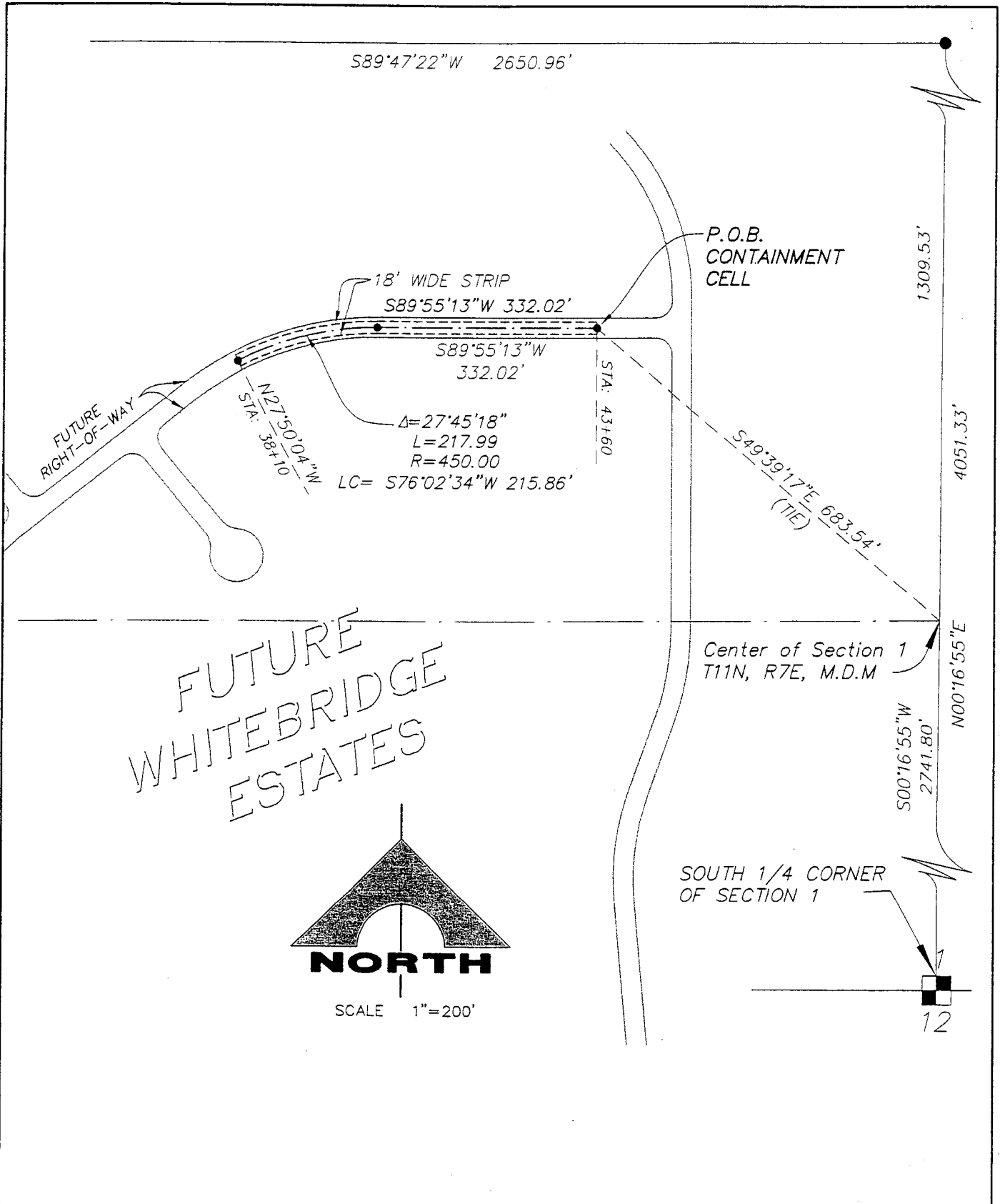
The Basis of Bearings for this description is identical with that of Book 20 of Parcel Maps, at Page 97 as determined by found monuments at the West one-quarter corner and the Southwest corner of Section 1, T. 11 N., R. 7 E., M.D.M., and being North 00°23'48" West between said monuments.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





G.C. WALLACE OF CALIFORNIA, INC.  
 Engineers/Planners/Surveyors  
 2150 RIVER PLAZA DR., SUITE 100, SACRAMENTO, CA 95833  
 TELEPHONE: (916) 286-7600 • FAX: (916) 286-7601

EXHIBIT "B"  
 CONTAINMENT CELL  
 FOR WHITEBRIDGE  
 PLACER COUNTY, CALIFORNIA  
 Auburn Manor Holding



(SCALE IN FEET)

DWG NO. L-XXX

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

SACRAMENTO

} ss.

On September 02, 2004

Date

before me,

KATI MOIRA REDMOND

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

NOTARY  
PUBLIC

personally appeared

BRAN C. VAIR

Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Kati Moira Redmond

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document:

DEED RESTRICTIONS - WHITEBRIDGE

Document Date:

9/2/04

Number of Pages:

13 plus

Signer(s) Other Than Named Above:

JAMES L. TJOSVOLD

### Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

SACRAMENTO

SS.

On SEPTEMBER 20  
Date

before me, KATI MOIRA REDMOND, NOTARY PUBLIC  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

JAMES L. TOSVOLD  
Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kati Moira Redmond  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document:

DEED RESTRICTIONS - WHITEBRIDGE

Document Date:

9/2/04

Number of Pages:

13 PLUS

Signer(s) Other Than Named Above:

BRIAN C. VAIL

2 ATTACHMENTS.

### Capacity(ies) Claimed by Signer

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here